

CITY OF MOUNTAIN VIEW

ENVIRONMENTAL PLANNING COMMISSION

STAFF REPORT

WEDNESDAY, SEPTEMBER 7, 2016

5. PUBLIC HEARINGS

5.1 Amendments to the Tenant Relocation Assistance Ordinance

RECOMMENDATION

That the Environmental Planning Commission review and make recommendations to Council on the draft Tenant Relocation Assistance Ordinance Amendments (Exhibit 1).

PUBLIC NOTIFICATION

The Commission's agenda is advertised on Channel 26, and the agenda and this report appear on the City's Internet web page. Interested stakeholders were notified of this meeting.

ENVIRONMENTAL REVIEW

Amendments to the Tenant Relocation Assistance Ordinance are exempt from the California Environmental Quality Act (CEQA) as it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment (CEQA Guidelines Section 15061.b.3).

PURPOSE AND SUGGESTED FORMAT FOR DISCUSSION

This item is brought to the EPC to review the draft ordinance and make recommendations to Council on these proposed amendments. Staff recommends the following format for this agenda item:

1. Staff presentation;
2. Questions from Commissioners about the staff report and ordinance amendments;
3. Public comment;

4. Commission discussion; and
5. Commission recommendation on draft amendments.

BACKGROUND

Over the past year, the City Council has been studying methods to address the concerns raised by residents regarding the lack of available rental units, low vacancy rates, rapid rent increases and evictions, as well as the Council's desire to address the displacement of tenants. Not many California cities have relocation assistance ordinances and most cities that do also have rent control. In Santa Clara County, no other city has a tenant relocation assistance ordinance with the same scope as Mountain View's ordinance. Two cities have limited relocation assistance requirements for condominium conversions or in their downtown redevelopment area.

Rent Stabilization Ordinances Adopted

In addition to adopting a Right to Lease Ordinance and a Rental Housing Dispute Resolution Program (RHDRP), the Council voted on August 9, 2016 to submit an ordinance, known as Measure W, to the voters on the November 8, 2016 ballot (Exhibit 2). If approved by the voters, Measure W would amend the City's Rental Housing Dispute Resolution Program Ordinance and regulate rents for those rental units that received a Certificate of Occupancy prior to February 1, 1995 by requiring a landlord and tenant to go to binding arbitration for disputes related to rent increases in excess of 5 percent of the base rent and service reductions. In addition, a landlord could only terminate a tenancy in those rental units covered by the ordinance for just cause, which would include failure to pay rent; breach of lease; nuisance; criminal activity; failure to grant reasonable access; necessary repairs; owner move-in; withdrawal of the unit from the rental market; and demolition. However, a rental unit would be exempt from the just cause for eviction protection if a landlord complies with the City's Tenant Relocation Assistance Ordinance ("TRAO"). At the same meeting, the Council directed staff to prepare amendments to the TRAO to require tenant relocation assistance for no-cause evictions as an alternative method to help mitigate the financial aspect of displacement of tenants in the City of Mountain View and to return with a draft ordinance as soon as practically possible to enact these provisions and ensure consistency between the TRAO and Measure W. The Council also indicated it would like to review the eligibility requirements and the level of assistance provided pursuant to the ordinance. As the TRAO is codified in the Zoning Code, the purpose of this item is to present the proposed amendments to the EPC in

order for the Commission to provide recommendations regarding the draft ordinance to the City Council.

Overview of the Current TRAO

The City first adopted the TRAO in 2010 in response to the displacement of very low-income households due to the renovation and redevelopment of rental housing. The City Council amended the TRAO in 2014 to increase the level of assistance provided to displaced tenants and to expand the scope of the ordinance to include both very low- and low-income households. The current TRAO requires landlords to provide relocation assistance to eligible residential households who are displaced when:

1. The landlord withdraws rental units from the rental housing market;
2. The landlord seeks to recover possession to demolish or otherwise remove a residential housing unit from residential housing market after having obtained all the proper permits from the City;
3. The landlord seeks to recover possession to remodel, renovate, or rehabilitate the units resulting in a permanent displacement of the tenants and the project requires permits from the City;
4. The landlord seeks conversion of a building into a condominium, community apartment, or stock cooperative;
5. The use of real property is changed from a residential use to a nonresidential use that requires a permit from the City; or
6. The change from rental to ownership units where the units were rented out for a period of time after being approved for sale.

Under the existing TRAO, no relocation assistance is required if a landlord relocates a tenant to another rental unit during renovation or repairs.

Eligibility for relocation assistance is determined by the income of a residential household and it must not exceed 80 percent of area median income ("AMI"). An eligible household would qualify for the cash equivalent of three months' rent based on the median monthly rent for a similar sized rental unit in Mountain View.

Proposed Modifications to the TRAO

The proposed ordinance has been reorganized in an effort to make it easier to understand and apply. The proposed ordinance looks different because a number of definitions have been moved to an expanded definition section. Proposed changes to the definitions are discussed in this staff report. In addition to relocating the definitions, staff took the opportunity to reorganize the ordinance and condense all of the procedural provisions (notice, required submittals, and process) into a single section. A discussion of the proposed substantive changes follows.

- In drafting the proposed ordinance, staff reviewed the current TRAO and the tenant relocation provisions included in the charter amendment, as well as the Right to Lease Ordinance and the RHDRP. Aside from including no cause within the definition of displacement, the following additional amendments are being proposed to expand the TRAO's scope to cover instances where an owner's move-in results in the displacement of a tenant.
- Removal of an exception relating to lease terminations under the definition of displacement.
- Modifications to the application of the ordinance in terms of the number of units that must be vacated, the definition of a rental unit, income eligibility, and assistance.
- Consideration of an enforcement provision.

Draft amendments to the TRAO are also shown in a redlined version to track the proposed changes (Exhibit 1). Following the November election, more amendments may be required to ensure consistency where the regulations may overlap.

Owner Move-in Added to the Categories of Displacement

The TRAO currently does not require a landlord to provide relocation assistance when the landlord or a relative of the landlord moves into a rental unit. The proposed charter amendment on the November ballot would require relocation assistance be paid to a tenant when an owner displaces the tenant by moving into the unit.

Question 1: Should displacement be expanded to include owner move-in?

Removal of Exception for Lease Terminations

Under the existing TRAO, the termination of a tenancy at the end of the lease term does not constitute a displacement. In light of the recent adoption of the Right to Lease Ordinance, this exception may not be consistent with the Council's expressed desire to address displacement. In other words, a tenant who is allowed to continue to rent on a month-to-month basis would be entitled to relocation assistance while a landlord could choose not to renew a lease and avoid payment of relocation assistance if this provision remains.

Question 2: Should this exception be eliminated?**Reduce the Number of Vacated Units that Determines When the TRAO Applies**

Currently, the TRAO applies when four or more rental units on a property are involuntarily vacated. In 2010, the original ordinance was drafted to apply when two or more units were vacated. The legislative history does not provide a clear explanation why the City Council chose four units as the threshold for requiring a landlord to provide tenant relocation assistance. Given the direction from the City Council to include no-cause evictions within the scope of the TRAO, and the goal of addressing displacement of tenants, staff seeks a recommendation from the EPC whether the TRAO should apply when less than four rental units are involuntarily vacated, particularly in the context of no-cause evictions.

Under the current TRAO, property owners may renovate up to three rental units within a 12-month period without needing to provide documentation of a tenant voluntarily vacating the unit. Some smaller multi-family property owners have slowly been renovating properties and displacing tenants without paying relocation assistance by only renovating three units or less in a 12-month period. Staff seeks clarification regarding the number of rental units to be vacated before relocation assistance is required.

Question 3: Should a lesser number of vacated rental units be considered for when the TRAO applies?**Expand the TRAO to Apply to Properties with Less than Four Units**

The existing TRAO requires that four or more units be located on a parcel or lot before the ordinance applies. There are some instances where there are three units on a lot, such as a lot with a single-family home and a duplex or a lot with a

triplex. Lower-income households who reside in these types of dwelling scenarios currently do not receive relocation assistance when the property is redeveloped.

Question 4: Should the TRAO apply when a lower number of rental units exist on a property?

Expand Eligibility to Cover Higher-Income Households

Under the existing TRAO, the maximum eligible income level is 80 percent of AMI based on U.S. Department of Housing and Urban Development (HUD) income levels for Santa Clara County and adjusted for household size. The proposed charter amendment would increase the eligible income level to 120 percent AMI (moderate income). Staff seeks a recommendation from the EPC whether to adjust the eligible income level in the TRAO. To provide some background for the discussion, the TRAO was originally intended to provide assistance to very low-income tenants. The City Council increased eligible income level from 50 percent of AMI to 80 percent of AMI in 2014 to require relocation assistance for both very low- and low-income residents. Staff is proposing for consistency that instead of the HUD income limits, the State of California Department of Housing and Community Development (HCD) income limits be used and referenced in the definition section of the ordinance. This will make the TRAO ordinance consistent with other programs. For reference, staff has prepared a table of income levels adjusted for household size to provide additional information.

Table 1 – Income Limits

Number of Persons Per Household	1	2	3	4	5
Household Income at 80% AMI¹	\$59,400	\$67,900	\$76,400	\$84,900	\$91,650
100% AMI	\$74,950	\$85,700	\$96,400	\$107,100	\$115,650
120% AMI	\$89,950	\$102,800	\$115,650	\$128,500	\$138,800

¹ Based on HCD 2016 Income Limits for Santa Clara County

Since the Tenant Relocation Assistance Ordinance was amended in 2014, seven projects approved by the City Council have been required to comply with the ordinance and seven projects are pending. For the seven approved projects, a total of 120 units have been demolished and 63 households have been eligible for relocation assistance. Slightly more than 50 percent of the households have been eligible for assistance. The rest of the displaced tenants have not qualified for

assistance because they earn more than 80 percent AMI. This is an increase from the assistance provided under the 2010 TRA0, which provided assistance to households with incomes up to 50 percent AMI (six projects; 94 units demolished, 17 households or 18 percent of the households have been eligible for assistance).

Staff is requesting a recommendation from the EPC whether the income eligibility level should be expanded to include households with higher income levels. If the EPC wants to recommend expanding eligibility, it could consider one the following three approaches:

1. Continue implementing a maximum income threshold framework for assistance and expand eligibility by increasing the maximum eligible household income level;
2. Expand eligibility to all displaced no-cause eviction households, regardless of their income level; and
3. Establish a minimum tenancy period instead of income level for determining eligibility. Minimum tenancy requirements could range from one year to five years. In this scenario, higher-income tenants could be eligible based on the length of tenancy.

Question 5: Should the income eligibility requirement be modified?

Increase Amount of Relocation Assistance

When first adopted, the relocation assistance included the cash equivalent of two months' rent, based on the monthly rent for the particular unit, and special circumstances households were entitled to an additional \$2,000 per rental unit. In 2014, the City Council increased the assistance for eligible households in both amount and duration. Eligible households receive the cash equivalent of three months' rent, but it is now based on the median monthly rent of a similar sized unit with the same number of bedrooms and bathrooms instead of the rent the particular household was paying. Special circumstance households now receive an additional \$3,000 per unit. In addition (as required by State law), eligible households receive a full refund of a tenant's security deposit, except for funds that may be necessary to repair tenant's damage to property in units that will be reoccupied prior to undergoing renovation or demolition and a 60-day subscription to a rental agency.

Under the current TRAO, an eligible family with children under 18 years of age displaced from a two-bedroom unit would receive \$11,900 in assistance and from a three-bedroom unit would receive \$15,880 in assistance.¹

Question 6: Should the amount of the assistance be increased?

Additional Programmatic Considerations for an Amended TRAO: Enforcement, Administration, and Cost

For most of the displacements covered by the current TRAO, the landlord must obtain an approval or permit from the City. This permit and approval process provides an existing infrastructure to facilitate compliance with the TRAO because staff must review each land use or building permit application.

However, there are two types of displacements that would qualify a tenant to receive relocation assistance but that do not currently require landlords to interact with the City. First, landlords who decide to withdraw their rental unit from the rental housing market do not need a permit to do so. Second, the Council has directed staff to include no-cause evictions in the definition of displacement. Currently, there is no mechanism to track no-cause evictions or requirement for landlords to notify the City. In both of these instances – withdrawing rental units from the market and no cause evictions – the lack of interaction with the City means that it can be challenging to facilitate compliance with the TRAO.

Additionally, even if landlords were required to interact with the City in these circumstances, the lack of enforcement mechanisms may add to the challenge of ensuring compliance with the TRAO. This is especially true because, unlike the demolition of a rental building for example, no-cause evictions and withdrawing units are much less visible and, therefore, difficult to detect. At the same time, because they are less visible, tenants in these situations may be more susceptible to being displaced and would, therefore, benefit from enforcement mechanisms to facilitate landlord compliance with the TRAO.

Staff recommends the ordinance contain enforcement provisions in order to provide staff with the tools to address noncompliance with the ordinance. The EPC can consider a number of options, such as requiring a landlord to notify the City when a no-cause eviction notice is issued; requiring landlords to notify the

¹ These assistance figures are based on July 2016 RealFacts data – \$2,914 for a two-bedroom and \$4,241 for a three-bedroom – and include the \$3,158 per unit allowance for a Special Circumstances household, as defined by Mountain View's Tenant Relocation Assistance Ordinance. These figures do not include the security deposit refund amounts, which the tenants would also receive.

City regarding the withdrawal of units from the market; enhancing outreach, training, and education to both landlords and tenants of their rights and responsibilities; providing staffing to facilitate proactive monitoring and enforcement of tenant turnover; and/or legal enforcement. Enforcement could range from providing a tenant with an affirmative defense in an unlawful detainer action to designating a violation of the ordinance as an infraction or misdemeanor. Several options are provided in Exhibit 3. Staff seeks a recommendation from the EPC whether to include an enforcement provision as a potential tool to encourage compliance and provide a method to address violations of the ordinance.

Question 7: Should an enforcement provision be included in the TRAO?

Administration and Program Costs

The scope of the relocation assistance program to address displacement of tenants due to no-cause evictions will depend on whether EPC input and Council direction includes compliance/enforcement tools and mechanisms to facilitate compliance with the TRAO. The cost of enforcement, and therefore the program, will depend on the type and extent of enforcement. Staff continues to explore alternatives, and based on input from the EPC, will provide additional information to the Council to facilitate its deliberation factoring in staff resource and cost implications.

Beyond enforcement, there are different alternatives for overall administration of the ordinance. One potential approach is to utilize a process very similar to the current ordinance and hire a third-party agency to administer the ordinance on a more streamlined basis. In other jurisdictions, a landlord simply pays relocation assistance directly to the displaced tenants. Should enforcement options be considered, a third approach could involve City staff, a third-party agency, or a hybrid model in order to provide administrative and enforcement functions. This could also include requirements for the landlord to submit to the City no-cause notices to evict, and for the City to monitor and track all notices. All three approaches would involve some level of City oversight and additional staffing resources. Currently, the City contracts with a third-party agency to administer the relocation assistance process and the developer or property owner pays the fees of the third-party agency. There are currently no proactive enforcement mechanisms. Staff is working with third-party agencies to determine workable procedures and the additional cost for providing services required to implement the changes in the ordinance.

NEXT STEPS

After the EPC makes recommendations on the amendments to the TRAO, the recommendation will be considered by the City Council at a public hearing.

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- Exhibits: 1. Clean and Redlined Ordinance Amendments
2. Measure W
3. Potential Enforcement and Remedy Provisions